DOCUMENT RESUME

ED 280 127 CS 505 594

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TITLE The Life and Death of Rajneeshpuram and the Still Lingering Dilemma of the Religion Clauses of the First Amendment.
PUB DATE Feb 87
NOTE 15p.; Paper presented at the Annual Meeting of the Western Speech Communication Association (58th, Salt Lake City, UT, February 14-17, 1987).
PUB TYPE Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Civil Rights; Collective Settlements; *Constitutional Law; Cultural Isolation; *Discriminatory Legislation; Religious Conflict; Religious Cultural Groups; *Religious Discrimination; *State Church Separation
IDENTIFIERS First Amendment; *State of Oregon v City of Rajneeshpuram

ABSTRACT

The town of Rajneeshpuram, Oregon, was incorporated for the purpose of achieving the religious vision of the Bhagwan Shree Rajneesh, just as the Mormons established communities around the teachings of Joseph Smith. The incorporation of Rajneeshpuram was challenged on the basis of the First Amendment, however, raising new questions in regard to the tension between the First Amendment's establishment (of religion) clause and free exercise clause. On March 27, 1984, Oregon's State Attorney General filed a complaint in Wasco County Circuit Court seeking declaratory relief from giving legal recognition to the City of Rajneeshpuram. At issue was the claim of "excessive entanglement" between religious and secular action. Attorneys for the Rajneeshees argued that the State of Oregon was in clear violation of the free exercise clause of the First Amendment and that the defendants were being singled out solely on the basis of religious affiliation. In December 1985, after an involved court battle, Judge Helen Frye rejected further motions by the Rajneeshees to enjoin state action and declared the incorporation of the City of Rajneeshpuram null and void. This case serves to emphasize the structural contradiction between the two religious clauses of the First Amendment. Notes are appended. (AEW)

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The Life and Death of Rajneeshpuram and the Still Lingering Dilemma of the Religion Clauses of the First Amendment

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Historically, the growth of religious liberty in the United States has flourished under the protection of the First Amendment. The uninhibited exercise of religious rights has been the cornerstone of the American experience, and while this nation has always appeared to foster the formation of "new" religions, the pace of religious change in recent years has become pronounced.[1] However, new religious organizations, particularly if their doctrines or practices fundamentally differ from mainstream values, have often been characterized as overly zealous and potentially dangerous to individual members as well as the requirements of public order.[2] It was within this context, the "cult" scare of the late 1970s and early 1980s, that a new guru, Bhagwan Shree Rajneesh, burst upon the religious stage with a highly trained and brash cadre of administrators and aides.

In July, 1981, the Rajneesh Foundation International (RFI), a non-profit corporation that is the Rajneeshee church, purchased the Big Muddy Ranch, a 64,000 acre parcel of land in central Oregon, for the purpose of creating a religious community based upon the teachings of the Bhagwan. Claiming a world membership of 500,000, the group soon found itself in conflict with long-time residents and property owners in the area, a conflict which quickly escalated into a pitched war of words. Charges of improprieties and counter-charges of religious persecution continued unabated for several years until the Bhagwan pleaded guilty to charges of conspiring to defraud immigration authorities and left the country.[3]

When the Rajneeshees first arrived in Oregon, little was known of their previous troubles in Poona, India. The incessant power struggles, the intense drive for operating capital, the link to drug smuggling, charges of arson, tax evasion and other assorted crimes were hidden behind the image of spirituality and love.[4] Yet, to those who did know they were haunting and prophetic signs. Under the leadership of Ma Anand Sheela, personal secretary to the Bhagwan and the guiding if not controlling force in the movement's complex corporate structure, the church appeared to have taken a dark turn. The more threatened and harassed the membership of the organization felt, the more the tools of deception and lawlessness were employed. In less than five years after their arrival, the Bhagwan had been forced to leave the country and 34 of the group's top leadership would be charged with 12 kinds of state and federal crimes, including attempted murder, assualt, arson, burglary, racketeering, electronic eavesdropping, and criminal conspiracy.[5]

Aside from an apparent reckless violation of the law, the attempt of the Rajneesh church to settle in a religiously homogeneous community is not unique in American history. Rajneeshpuram was incorporated for the purpose of achieving the religious vision of the Bhagwan, not inherently distinct from the efforts of Mormons to establish communities around the teaching of Joseph Smith. What is unique is that never before has the existence of a "validly" incorporated city been challenged on the basis of the Establishment Clause. As a result, new First Amendment questions have been raised in regard to the tension between the establishment and free exercise clauses.

The City of Rajneeshpurham

The most serious threat to the religious and political activities of the Rajneesh commune came on March 27, 1984, when Oregon's State Attorney General filed a complaint in Wasco County Circuit Court seeking declatory relief from giving legal recognition to the City of Rajneeshpurham. Several months before, the State ceased to grant the city certain benefits and powers, including revenue sharing monies as well as continuing access to the Law Enforcement Data System. The State charged that:

> The unique and pervasive interrelationship of the City of Rajneeshpuram with corporate entities created for and dedicated to the advancement of a particular religion raises fundamental questions as to whether it would violate Article I, sections 2, 3, 4, and 5 of the Oregon Constitution and the establishment clause of the First Amendment to the United States Constitution, for the State of Oregon to recognize the City as a valid municipal corporation.6

At issue is the claim of "excessive entanglement" between religious and secular action. In May, 1982, an incorporation election under Oregon State law was held at the then Rancho Rajneesh. Commune residents voted 154-0 for incorporating 2,013 acres of the ranch. The following year a city council was elected and a city government was organized. The move towards incorporation was a critical one for the Rajneeshees since it opened up the commercial development of the land, and more importantly, gave control to the city rather than county government as to how the property would be used.

The new city was located entirely within the boundries of the larger ranch. The Rajneesh Neo-Sannyas International Commune ("the Commune") held a

long term lease from the Rajneesh Investment Corporation (RIC) of all the land at the Ranch. All city property was either subleased or made available by the commune. All members of the commune were Rajneeshees and no one could be admitted as a member, and by implication as a resident of the city, without the approval of the secretary of Bhagwan Shree Rajneesh, Ma Anand Sheela. The State of Oregon contended that because of the interrelationship of religious and nonreligious corporations, which controlled all residency and lands, the sovereign power of the city was compromised by religious leaders.

On August 6, 1984, attorneys representing the religious and civil officials named in the complaint filed a motion to dismiss or strike the State's action in U. S. District Court. They argued that in seeking declatory relief the State of Oregon was in clear violation of the free exercise clause of the First Amendment; they insisted that the defendants were being singled out solely on the basis of religious affiliation.[7] The State, it was claimed, cannot deny to any citizen the right to self-government merely because she/he was a member of a particular religious group.[8] In their brief the attorneys cited a 1978 case, McDaniel v. Paty, where the Supreme Court struck down a Tennessee statute barring ministers from serving as delegates to a state constitutional convention.[9] As in the Tennessee case, it was suggested that there was no evidence to claim that Rajneeshees holding public office would be any less faithful to their oaths of service than anyone else. Further, in its efforts to deny legal recognition to the newly incorporated city, it was claimed that the State of Oregon was not only attempting to strip residents of their free exercise rights, but such action in itself constituted a violation of the Establishment Clause, which mandates government neutrality on religious issues.

In an important opinion delivered on October 12, 1984, Federal Judge Helen Frye denied the motion to dismiss. Judge Frye was not insensitive to the conflict between the Establishment and Free Exercise Clauses of the First Amendment in this specific case, e.g., by the State granting recognition it would be in potential violation of the establishment clause and by not doing so it could be restricting the free exercise rights of the citizens of Rajneeshpuram. She stated:

> A review of the cases indicates that there is no precise legal formulation for the court to follow in determining whether under the facts as alleged by the State of Oregon the existence and operation of the City of Rajneeshpuram is an unconstitutional establishment of religion, or whether, on the other hand, not allowing the City to exist would violate the defendants' rights to freely practice their religion. No federal case has addressed the precise situation present in this case.10

However, she concluded that:

> If the facts alleged in the State of Oregon's complaint are true, the court concludes that the potential injury to the anti-establishment principle of the first amendment by the existence and operation of the City of Rajneeshpuram clearly outweighs the potential harm to the defendants free exercise of religious rights. To deny defendants the right to operate a city is the only means of achieving a compelling state and federal interest--that of avoiding an establishment of religion. If the City of Rajneeshpuram were to cease to exist, defendants would not be precluded from practicing their religion nor from associating with whom they choose in order to do so. Defendants would not be denied access to public services...In short, although defendants' freedom to freely practice their religion would be burdened if the City of Rajneeshpuram were no longer recognized as a city, the burden upon them is small and indirect compared to the harm to be done to the Establishment Clause by allowing the City of Rajneeshpuram to operate as a city.11

On December 27, 1985, Judge Frye rejected further motions by the Rajneeshees to enjoin State action and made a summary judgment declaring

the incorporation of the City of Rajneeshpuram null and void. She concluded that the material facts in the case had not changed and that by granting recognition to the City the State of Oregon would be in violation of the Establishment Clause of the First Amendment.[12] It was over, and for the first time in American history a city had been denied legal recognition on First Amendment grounds.

The issues were and still are complex. The unique circumstances of this case, particularly in light of some of the excessive and illegal actions of key leaders in the Rajneesh movement, does not resolve what appears to be a structural contradiction between the two religious clauses of the First Amendment. Given the tremendous growth of new religious organizations, one can only speculate as to when such a similar conflict will again be before the courts.[13] The critical difficulty for the citizens of Rajneeshpuram in obtaining legal status as a municipality revolved around the interrelationship of their church with other corporate entities. If in similar cases it can be shown that 1) all or most of the land in a city is under the direct or indirect control of a religious organization, and that 2) residency is also regulated or controlled via some religious conditions, then state action granting recognition would appear to be in violation of the Establishment Clause of the First Amendment. It is important to note that it would be <u>the state</u> that would be in violation and not anything per se that was done by the religious group or its leaders.

It appeared as though Rajneesh leaders could have easily rectified the situation by simply diversifying their community. They could have eliminated any control they may have had over residency requirements and

opened the commune up to other property owners, businesses and religious faiths. If they had done so, there would have been little justification for any state regulation or restraint upon their free exercise rights. It would have also seriously diminished any charges of the establishment of a theocracy. If municipal status is ever a goal to any group, and there are some compelling benefits to its achievement, then some accommodation to state and federal statute will have to be made.

Even if, as the defendants in this case claimed, there is no demonstrable religious control over city affairs, the probability exists. This makes the municipality a de facto religious organization.

The Establishment Clause

Case law preventing the union of government and religion is clear. In Lemon v. Kurtzman, the Supreme Court consolidated previous decisions into three tests of whether or not a governmental action was in violation of the Establishment Clause. First, the statute or state action "must have a secular purpose."[14] Secondly, the statute or action "must neither advance nor inhibit religion."[15] Thirdly, the statute or action "must not foster an excessive entaglement with religion."[16] While it would be difficult to prove that the act of incorporation of Rajneeshpurham was a religious one (all State laws were followed), the unique relationships between the church and the church owned corporations which controlled the land as well as governmental functions would make the State of Oregon in violation of the Establishment Clause if it recognized and paid monies to the City;

it would be advancing a particular religious organization and fostering excessive entanglement.

In a more recent Supreme Court decision, Larkin v. Grendel's Den, Inc.,[17] the Court held that a Massachusetts statute which allowed churches to veto applications for a liquor license within 500 feet of a church or school was in violation of the Establishment Clause because 1) there was the possibility that the churches might act for explicitly religious goals, and 2) such a veto power fostered excessive government entanglement with religion. The Court argued:

> The churches' power under the statute is standardless, calling for no reasons, findings, or reasoned conclusions. The power may therefore be used by churches to promote goals beyond insulating the church from undesirable neighbors; it could be employed for explicitly religious goals...This statute enmeshes churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause; the objective is to prevent as far as possible, the intrusion of either into the precincts of the other...The mere appearance of a joint exercise of legislative authority by church and state provides significant symbolic benefit to religion in the minds of some by reason of the power conferred. It does not strain our prior holdings to say that the statute can be seen as having a 'primary' and 'principal' effect of advancing religion.[18]

Attorneys for the Rajneeshees claimed that the State of Oregon overlooked a crucial distinction in regard to Larkin, namely that the authorization of government power to a church is critically different from authorization of government power to a religious people, which they insisted was a more accurate description of Rajneeshpuram. Perhaps. However, the complete control of property and residency requirements appeared to have weakened such a defense.

The Free Exercise Clause

Most issues under the Free Exercise Clause of the First Amendment have occurred when government action indirectly penalized or unfairly burdened conduct required by a religious belief or tenet. While the freedom to believe is protected absolutely, the freedom to act is not. In Sherbert v. Verner,[19] the Court developed a three-pronged balancing test to assess free exercise rights: 1) whether government action imposed a burden upon the free exercise of religion, 2) whether the burden is justified by a compelling state interest, and 3) whether there are other alternatives that are less restrictive. The Rajneeshees claimed that if they were not allowed to incorporate and operate the City of Rajneeshpuram, their First Amendment rights to practice religion and freely associate for the purpose of doing so would be violated, as well as their 14th amendment rights for having been singled out on religious grounds. The U.S. District Court ruled that the "factual situation" in this case was so extreme that legal recognition by the state would have constituted a violation of the Establishment Clause. This question is not an easy one since the Supreme Court developed separate tests for each clause and there is little guidance when the two conflict, as they appeared to do in this case. Which clause should be given the preferred status and whether it is even possible to develop consistent standards for resolving future controversies remains unanswered.[20] The State of Oregon's complaint and ultimate victory did have a chilling effect on the free exercise rights of the citizens of Rajneeshpuram. However, the Rajneeshees did have alternatives which were less restrictive in outcome than the State's violation

of the Establishment Clause. Whether or not in future cases the federal appellate courts will agree could alter the very nature of church and state relations.

Some Reflections

The troubling difficulty with the decline and fall of the Rajneeshees in Oregon is not so much the fact that their existence brought controversy, turmoil, and violations of the law, but rather what serious constitutional principles are embedded in the episode. With some minor adjustments, perhaps a little less zeal and paranoia, they might have become a productive community. They could have equally become a validly incorporated city which was a de facto theocracy. The real problem for the courts, (not so much in this case because as Judge Frye suggested the factual situation was so extreme that the ruling was probably less than perplexing) is that the two religion clauses of the first amendment do point in opposite directions. Which one will be preferred in any given case is more often than not a problem of what Phillip Johnson calls characterization.

> A particular disputed issue can often be characterized in two or more different ways: for example, an establishment clause problem, a free exercise problem, or a free speech problem. The outcome depends largely, though not entirely, on the characterization option that one selects...and no neutral principles govern this determinination.21

That the state should remain neutral in religious matters is rarely debated. But the precise nature of that neutrality is unclear. The initial motivation for immigration to America during the colonial period involved an effort to escape religious persecution. Religiously homogeneous

communities were the condition of our early experience. The Establishment Clause does not prohibit people of similar faith from participating in self-government. What is difficult to determine is when there is de facto control by religious groups over civic affairs.

The history of religion in the United States has not been without intolerance, bigotry, and in some distressing cases, violence. Yet, the level of religious diversity outruns most other nations and this fact can be seen as a corollary to freedom. While religious questions for the average person occupies a most significant and personal dimension of their existence, religious differences translated into political action accounts for a good portion of the world's misery. The effort, particularly by the Supreme Court, to maintain a wall of separation between church and state has diffused much of the potential divisiveness afflicting other nations and allowed most religions in this nation to flourish. What is troubling in cases similar to the Rajneeshees' is that there is no logical framework capable of explaining the law, especially where the Establishment and Free Exercise Clauses are in conflict. While such a condition does allow for flexibility, it just as easily could lead to discriminatory actions against highly unusual or unpopular religious sects. On the other hand, it also could lead to a context where the state is prevented from intervening in a form of incidental religious control over political affairs.

Notes

1. Nearly half of the new religions and sects have formed since the 1960s and are currently estimated to number around 2,500. See Melton J. Gordon, Encyclopedia of American Religions, Vol. 2 (Wilmington, N.C.: McGrath, 1978).

2. See J. Clark, "Cults," JAMA, 242 (3):279-281, 1979; R. Delgado, "Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment," University of Southern California Law Review, 51:1-98, 1977; F. Conway and J. Sigelman, Snapping: America's Epidemic of Sudden Personality Change, (N.Y.: Dell/Delta Books, 1979); C. Evans, Cults of Unreason, (N.Y.: Spectrum, 1973); David Halperin, Ed., Religion, Sect, and Cult, (Boston: John Wright, 1983); M. Singer, "Coming Out of Cults," Psychology Today, 12: 79-81, 1979; P. Zimbardo, "Mind Control in 1984," Psychology Today, 18:68, January, 1984; C. Stoner and J. Parke, All God' Children, (N.Y.: Penguin Books, 1979).

3. Callister, S., Long, J., and Zaitz, L., "For Love and Money," The Oregonian. (A Special Report), June 30-July 19, p. 13-14.

4. Ibid., p. 9-10.

5. Callister, S., Long, J., and Zaitz, L., "On the Road Again." The Oregonian. December 30, 1985, p. 2. Ma Anand Sheela was eventually convicted of attempted murder and conspiracy to tamper with consumer products (salmonella poisoning of a salad bar in The Dalles, Wasco County, Oregon) and is currently serving a four year sentence.

6. Brief of Complaint for Declatory Relief (Separation of Church and State), Circuit Court for the State of Oregon, Wasco County, Oregon., March 27, 1984, p. 5.

7. Brief for the Defendants, State of Oregon v. City of Rajneeshpurham, et.al., U. S. Federal District Court, No. 84-359. p. 3-5.

8. Ibid., p. 9-10.

9. 435 US 618 (1978).

10. State of Oregon v. City of Rajneeshpurham, et.al., 359 F 2d 84 (1984) p. 11-12.

11. Ibid., p. 16.

12. State of Oregon v. City of Rajneeshpurham, et.al. Summary Judgment. December 11, 1985. 359 F 2d 85.

13. The Church Universal Triumphant plans to build a "holy city" outside of Yellowstone National Park near Gardiner, Montana. Local residents, state and environmental officials have already expressed concern and compared the situation the Rajneeshees in Oregon. The Oregonian. December 2, 1986. p. A16.

14. 403 US 602 (1971), p. 612.

15. Ibid., p. 612.

16. Ibid., p. 613.

17. 459 US 116 (1982).

18. Ibid., p. 306-307.

19. 374 US 398 (1963).

20. See Jesse Chopper "Defining Religion in the First Amendment," University of Illinois Law Review, 1982, No. 3, 579-613; Jesse Chopper, "The Religion Clauses of the First Amendment: Reconciling the Conflict," University of Pittsburg Law Review, Vol. 41, Summer, 1980, 673-701.; George C. Freeman, "The Misguided Search for the Constitutional Definition of Religion," 71 Georgia Law Journal 1519 (1983); George Anastaplo, "The Religion Clauses of the First Amendments," Memphis State University Law Review, Winter 1981, pp. 151-230.

21. Johnson, Phillip E., "Concepts and Compromise in First Amendment Religious Doctrine," California Law Review, No. 5, September, 1984, p. 820-821. Johnson uses Widmar v. Vincent (1981) as an example of the conceptual chaos pervading the conflict between the two religious clauses. In the Widmar case a Christian student group at the University of Missouri was using school facilities for their worship meetings. University officials stopped the meetings claiming it violated the separation of church and state. The students responded by arguing it was a violation of their free exercise and due process rights because they were being denied what was allowed to other student groups simply on the basis of the content of their speech. The federal district court agreed with the administration. The court of appeals agreed with the students. Johnson suggests that both positions are rational on constitutional grounds. The Supreme Court avoided the religious issues and decided the case on free speech grounds ruling that worship is a form of communication and that the state may not favor one speaker over another.